

## **FINAL BILL ANALYSIS**

**BILL #:** CS/CS/HB 647

**FINAL HOUSE FLOOR ACTION:**

113 Y's 0 N's

**SPONSOR:** Rep. McBurney

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/CS/SB 930

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### **SUMMARY ANALYSIS**

CS/CS/HB 647 passed the House on April 29, 2011, and subsequently passed the Senate on May 2, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-190, Laws of Florida, and becomes effective July 1, 2011.

The Florida Volunteer Protection Act provides that any person who volunteers to perform any service for any nonprofit organization without compensation is not civilly liable for any act or omission in certain situations. It is unclear whether compensation from an outside source, such as from an employer who might continue to pay an employee who does volunteer work for a nonprofit organization, affects liability protection.

This bill provides that a person who volunteers for a nonprofit organization and is not paid by the nonprofit organization, regardless of whether the person is receiving compensation from another source, has the same protections as any other volunteer. This protection only applies if the volunteer is not acting as the agent of the source from which the volunteer is receiving compensation.

This bill does not appear to have a fiscal impact on state or local governments.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background - The Florida Volunteer Protection Act

Section 768.1355, F.S., is titled the Florida Volunteer Protection Act (the "Act"). The Act provides that any person who volunteers to perform any service for any nonprofit organization<sup>1</sup> without compensation is considered an agent of the nonprofit organization when acting within the scope of any official duties. The volunteer is not civilly liable for any act or omission which results in personal injury or property damage if:

- The volunteer was acting in good faith within the scope of any official duties;
- The volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct of the volunteer in the performance of such duties.<sup>2</sup>

If a volunteer is determined not to be liable pursuant to the Act, the nonprofit organization for which the volunteer was performing services when the damages were caused is liable for the damages to the same extent as the nonprofit organization would have been liable if the liability limitation under the Act had not been provided.<sup>3</sup>

The Act provides that "compensation" does not include a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.<sup>4</sup> The Act does not address situations where a person is being paid by an outside entity but performing volunteer services for the nonprofit organization without pay.

A court has explained the purpose of the Act:

The legislature's clear intent is not to immunize volunteers from liability, but rather to shift liability from the volunteer to the non-profit organization only where the volunteer is exercising reasonable care and meets the other statutory criteria. See § 768.1355(2). Equally, the legislature determined that non-profit organizations should not be the guarantors of the conduct of their volunteers where the volunteer fails to exercise reasonable care.<sup>5</sup>

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<sup>1</sup>For purposes of this act, the term "nonprofit organization" means any organization which is exempt from taxation pursuant to 26 U.S.C. s. 501, or any federal, state, or local governmental entity.

<sup>2</sup> See s. 768.1355(1), F.S.

<sup>3</sup> See s. 768.1355(2), F.S.

<sup>4</sup> See s. 768.1355(1)(b)2., F.S.

<sup>5</sup> *Campbell v. Kessler*, 848 So.2d 369, 371 (Fla. 4th DCA 2003).

## **Effect of the Bill**

This bill amends the Act to provide that a person who volunteers for a nonprofit organization without pay from the nonprofit organization, regardless of whether the person is receiving compensation from another source, is an agent of the nonprofit organization while acting in the scope of the official duties performed as a volunteer. This bill further provides that such person, and the entity that is paying the person, has the same protections as any other volunteer under the Act. The protections only apply if the volunteer is not acting as an agent of the source from which the volunteer is receiving compensation.

Therefore, this bill provides that persons that provide volunteer services without receiving compensation from any source are treated the same as persons who perform volunteer services for a nonprofit organization but are being paid by another entity.

This bill provides an effective date of July 1, 2011, and applies to causes of action arising on or after that date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.